

Secs. 40-201—40-227. Reserved.

**ARTICLE IX. PIPELINES, CONDUITS,
ETC., ACROSS, ALONG OR UNDER
STREETS***

Sec. 40-228. Definitions.

For the purposes of this article, the following terms have the meaning ascribed to them in this section, unless the context clearly indicates otherwise:

Abandoned pipeline means a pipeline in any portion of a street that the permittee has permanently disconnected from an operating pipeline.

Director means the director of the city's public works and engineering department or his or her designee.

Effective date means the effective date of this article which is December 11, 2001.

Emergency refers to an incident that may cause an immediate threat to public health, safety, or welfare, including an incident in which any of the following has occurred, is occurring or is imminent: (i) fire or explosion not initiated by the permittee as part of its operations, in accordance with accepted safety practices; (ii) release of an explosive gas, hazardous liquid or chemical that could adversely affect the environment or health of individuals, livestock, domestic animals, and wildlife; (iii) death of any person; (iv) bodily harm of any person that results in loss of consciousness, the need to assist a person from the scene of an incident or the necessity of medical treatment in excess of first aid; (v) damage to private or public property not owned by the permittee in excess of \$5,000.00 in combined values; or (vi) the rerouting of traffic or evacuation of buildings.

Existing pipeline means a pipeline, including an abandoned pipeline, in any portion of a street as of the effective date of this article.

Gathering system means a pipeline or system of pipelines, in any portion of a street, operated as

incident to the development or operation of an oil and/or gas field within or adjacent to the corporate limits of the city, including but not limited to lines for gathering liquids or gases from wells, tanks, or field pumping stations, for the transportation of water (including salt water) for mineral drilling and production purposes, and for transportation of liquids or gases produced from the field to other locations within the field for operational, gathering, or drilling purposes or to a gas plant or pipeline not included in such gathering system.

New pipeline means a pipeline other than an existing pipeline in any portion of a street.

Permit ordinance means a permit ordinance enacted by city council pursuant to this article.

Permitted affiliate means a person controlling, controlled by, or under common control with permittee, which has (or for which permittee has) agreed, in a form approved by the city attorney, to unconditionally assume all duties, obligations, and liabilities of permittee under this article and/or a permit ordinance, without regard to the legal status of such person.

Permittee means a person, its successors and assigns, and permitted affiliates named in a permit ordinance.

Person means an individual, corporation, joint venture, partnership, limited liability company, limited partnership, limited liability partnership, municipality, or other legal entity, including but not limited to trustee, assignee, receiver, and personal representative.

Pipeline means a system of physically connected lines of pipe through which gas or liquids move in transportation and which are operated as a single unit under normal operating conditions, including but not limited to spurs, laterals, valves, corrosion protection devices, and other appurtenances attached to and part of the operation of the line of pipe. Each gathering system shall be treated as one pipeline for all purposes of this article and each permit ordinance.

Street means, but is not limited to in any manner, the surface, land below and airspace above any public street, road, avenue, highway,

*Cross references—Oil and gas wells, Ch. 31; installation of pipelines for oil and gas wells under public property, § 31-46 et seq.

freeway, bridge, tunnel, alley, boulevard, sidewalk, parkway, lane, drive, circle, or other public right-of-way (each irrespective of its extent of public use or whether opened to vehicular traffic) in the corporate limits of the city, as may be established from time to time. "In" the street means across, along, under, or over a street. (Ord. No. 01-1078, § 2, 12-5-01)

Sec. 40-229. Violations of article.

(a) It shall be a violation of this article for a person to knowingly make a material misrepresentation of any information reported under this article or to own, maintain, operate, acquire, construct, or extend a pipeline in the street except in accordance with the provisions of this article.

(b) A material and willful violation of any section, subsection, or part of this article may be subject to a fine of not more than \$1,000.00, which shall be assessed per day following any failure to comply within 15 business days after notice from the director.

(c) The city shall be entitled to injunctive relief in a court of appropriate jurisdiction to prevent violation of or to compel compliance with the provisions of this article, in addition to all other rights and remedies available to the city. (Ord. No. 01-1078, § 2, 12-5-01)

Sec. 40-230. Scope of article.

This article applies to each pipeline in a street or streets. No permit ordinance shall authorize the transport or distribution of natural gas by a permittee or applicant whose use of streets is subject to city action or approval under Texas Revised Civil Statutes article 1175. Nothing contained in this article shall preclude the city imposing other or additional fees or charges for the use or presence of pipelines in its streets if the city is required or allowed to assess such fees or charges pursuant to Texas Tax Code § 182.025, or other applicable federal, state or local law, now or hereafter existing, which authorizes the city to make a charge for the use of its streets in excess of the charges set forth in section 40-234(f) of this Code. Such other fees or charges, if assessed by the city, shall be in lieu of the charges set forth in section 40-234(f) of this Code, but the remaining

terms and provisions of any permit ordinance then in effect shall remain in full force and effect, save and except of any conflict with the applicable law under which the other fees or charges are assessed.

(Ord. No. 01-1078, § 2, 12-5-01)

Sec. 40-231. Permit ordinance required.

No person may own, maintain, operate, acquire, construct, or extend a pipeline in a street except in accordance with a permit ordinance enacted in accordance with this article.

(Ord. No. 01-1078, § 2, 12-5-01)

Sec. 40-232. Application process.

(a) Application for a permit ordinance shall be made to the director and shall include:

- (1) For all existing pipelines:
 - (a.) Maps or schematic drawings, in a format to be approved by the director, showing the route within the city of each pipeline including its location and elevation in every street (elevation need not be supplied for gathering systems, or if not economically feasible);
 - (b.) The diameter, normal operating pressure range and the maximum allowable operating pressure of each existing pipeline, other than a gathering system, within the city;
 - (c.) The materials transported by each existing pipeline within the city;
 - (d.) The location of shutoff valves for every segment of a pipeline in a street;
 - (e.) The business address and telephone number of the person responsible for the operation of each existing pipeline;
 - (f.) The business address and telephone number of the owner of each existing pipeline;
 - (g.) The telephone number of at least one emergency contact available on a 24-hour basis; and,

- (h.) Such other information as the director shall reasonably request.
 - (2) Certificates of insurance for the coverages set forth in this article; and;
 - (3) The name, address and telephone number of permittee and the names of its permitted affiliates, if any.
- (b) If the application is in compliance with the terms of this article the director shall recommend to the city council that it enact a permit ordinance.
- (c) If the director believes the application is not in compliance with the terms of this article, the director shall notify the applicant in writing of the specific deficiencies found.
- (d) If the applicant re-files its application and/or amends its application to correct all deficiencies noted by the director, the director shall recommend to the city council that it enact a permit ordinance.
- (e) A permit ordinance will constitute permit for pipelines owned or operated by the permittee or any permitted affiliate designated by the permittee in its application. Permittee may add additional permitted affiliates under its permit from time to time by submitting to the director a suitable written assumption by or on behalf of the permitted affiliates of all duties, obligations, and liabilities of a permittee under this article in accordance with section 40-234(m) of this Code.
- (f) The director shall endeavor to process applications within 120 days after their submittal, refiling, or amendment, as applicable.
(Ord. No. 01-1078, § 2, 12-5-01)

Sec. 40-233. Form of permit ordinance.

Every permit ordinance enacted pursuant to this article shall permit, on the conditions provided in this article, the construction, operation, maintenance, improvement, repair, and replacement in the street of pipelines (including new pipelines constructed pursuant to construction permits granted under subsection (c) of section 40-234) owned or operated by permittee or any designated permitted affiliate and within the scope

of this article. The city attorney shall prepare each permit ordinance recommended by the director consistent with this article.
(Ord. No. 01-1078, § 2, 12-5-01)

Sec. 40-234. Conditions of permit ordinance.

(a) *Term.* The term of the permit ordinance, subject to the termination provisions, shall be for a period of a maximum of 30 years from and after its effective date.

(b) *Material transported.* Permittee may operate pipelines authorized under the permit ordinance for the purpose of transporting the material or materials indicated in the application or in accordance with any notice filed with the director pursuant to subsection (d) below. If permittee changes the material transported in a pipeline, the permittee shall notify the director in accordance with subsection (d) below.

(c) *Permit for new pipeline.*

(1) *Application requirements.* From time to time during the term of a permit ordinance, permittee may file an application to construct a new pipeline (including an extension of a previously constructed pipeline) in a street. To apply, permittee shall submit to the director the information set forth in section 40-232(a)(1) of this Code. Notwithstanding anything contained in this article or in any permit ordinance to the contrary, the director shall not approve any application for a new pipeline (other than a replacement pipeline) which is intended to be constructed so as to run within and parallel to the right of way of a street for a distance of 5,000 or more consecutive feet, unless expressly authorized by the city council.

(2) *Permit approval process.* If permittee has supplied the required information to the director, and the director determines that the new pipeline will not unduly interfere with the construction, maintenance, or use of any existing or planned public work or utility in the affected streets, the director shall permit the new pipeline by issuing an addendum to the existing permit ordinance. If the director does not ap-

prove the application, the director will notify permittee in writing of the basis of the failure to approve, and permittee may re-file its application to cure any deficiency capable of cure by permittee. The director shall endeavor to process applications within 120 days after their submittal, or refiling.

- (3) *Construction permit required.* Permittee shall not construct or cause to be constructed a new pipeline in a street without obtaining a permit for such construction from the director in accordance with this subsection.

(d) *Updating information.* Permittee shall update permit information within 30 days after changes occur. Permittee shall not transport in a pipeline any material other than materials set forth in its application and prior notices, or operate pipelines in excess of their maximum operating pressure or disable any shutoff valve, without notifying the director of such change ten days or more prior to such change. Upon request by the director, made no more frequently than annually, permittee shall certify in writing to the director that permittee's information filed with the city is true, correct and complete.

(e) *Abandoned pipeline.*

- (1) Permittee shall notify the director of the location of each abandoned pipeline owned by permittee in the street as of the effective date and, on request, notify the director of the manner in which such pipeline has been retired from service, to the extent such information is available.
- (2) In the event a pipeline that is permitted under a permit ordinance becomes an abandoned pipeline, permittee shall notify the director as soon as practicable. The director may request the permittee to remove such abandoned pipeline from the street (and if objected to by permittee, only if city council so directs), and in such instance, permittee shall obtain all building permits and street-cut permits, and effect such removal within 120 days.

- (3) Permittee shall not be required to pay any fees under its permit ordinance for an abandoned pipeline following the date of its abandonment, however, permittee shall not be allowed any credit or rebate for any fees previously paid for an abandoned pipeline.

(f) *Fees.* Permittee shall pay the following fees to the city on or before the stated due date:

- (1) A fee of \$2,000.00 per person due and payable at the time of a permit application.
- (2) A fee of \$1,000.00 per pipeline to be covered by the permit ordinance due and payable at the time of a permit application.
- (3) A fee of \$1,000.00 per person due and payable January 1 of each year during the term of a permit ordinance.
- (4) A fee of \$2,000.00 due and payable at the time of making application to construct a new pipeline.
- (5) A fee of \$500.00 to add a newly acquired pipeline to a permit ordinance after the effective date of its permit ordinance.

For purposes of this subsection, a permittee and its permitted affiliates shall be considered to be one person. The foregoing fees are commensurate with the city's expenses in administering, supervising, inspecting, and regulating pipelines in streets. The city does not waive by assessing the foregoing fees and expressly reserves its right (i) under Texas Tax Code § 182.025 to make a reasonable lawful charge for the use of a street in the city by a public utility, as defined therein, to distribute gas, and (ii) to assess any other lawful fees or charges.

(g) *Miscellaneous.* All costs and expenses connected with a pipeline, including without limitation costs and expenses for the operation, maintenance, repair, and insurance of the pipeline, shall be permittee's sole responsibility. The pipeline and the internal or external, structural, electrical or mechanical apparatus and hardware included therein shall at all times during the

term of the permit ordinance be the sole property of permittee or the person for whom permittee operates the pipeline. Furthermore, throughout the term of a permit ordinance, permittee shall at all times, maintain, operate and repair the pipeline in accordance with all applicable laws. The city retains the right to make visual, non-invasive inspections of the pipeline and on request of the director from time to time, to require permittee to provide available records or data to demonstrate its current compliance with the terms of this article.

(h) *Restoring streets.* In installing, maintaining, repairing or removing a pipeline, permittee shall not disturb water mains or sanitary or storm sewers without the approval of the director, except during an emergency. Permittee shall, at its sole cost and expense, refill and repair (including by repaving any cut in any pavement or sidewalk) all excavations made by permittee in the street or any adjacent public right-of-way or other city property and all damage to water mains and sanitary and storm sewers in connection with the maintenance, operation, repair or removal of any pipeline.

In the event that permittee fails to commence or thereafter to diligently prosecute any required repair, refilling or other work so required to be done by the permittee, following notice and opportunity to cure as provided for in this article, then the city may cause such work to be done and may recover all costs thereof from permittee together with all court costs and reasonable attorney's fees.

(i) *Removal.* The city council reserves the right, subject to the terms of this article, to require permittee to remove a pipeline from the street and cause the street to be restored to the same condition, or in as good a state of repair or condition, as said street was in prior to placement or removal of the pipeline, whenever required to maintain the safe condition of the city's use of the street or for the construction of public works.

(j) *Other ordinances.* Permit ordinances issued under this article are in all respects subject to the charter and ordinances of the city, including but not limited to section 40-4 of this Code, article V of this chapter, the regulations issued pursuant to

section 40-128 of this Code, the Construction Code, the Fire Code, and such future charter provisions and ordinances as may be hereafter passed and adopted by the city, except that (i) the insurance and indemnity provisions of this section shall pre-empt the requirements of sections 40-136(b)(8) and 40-147 of this Code and (ii) sections 40-143 and 40-145 of this Code shall not apply to pipelines within the scope of this article.

(k) *Relocations.* When found necessary by the director to facilitate the construction of public works, permittee shall lower, adjust or remove a pipeline in a street. It is the purpose of this subsection that improvements, changes and alterations in existing streets covered by this article, including right-of-way and water, sanitary sewer or storm sewer lines, shall in no wise be hampered by permittee's pipeline. All work incident to the lowering and/or relocation of permittee's pipeline, or of removing a permittee's pipeline pursuant to subsection (i) of this section, shall be done at the sole expense of permittee, unless there was no street, street easement or public way at such location prior to the installation of the pipeline or pipeline easement, in which case the city shall bear the expense of relocation or removal. In the event of a dispute, permittee shall bear the burden of proving no prior street or street easement.

(l) *Successors.* The permit ordinance and all limitations and obligations imposed thereby and under this article shall inure to the benefit of and be binding upon the successors, in law or otherwise, of permittee.

(m) *Acceptance of permit ordinance.* Permittee shall file a written acceptance of the permit ordinance with the city secretary within 30 days after the date of passage thereof and shall thereupon be bound by all of the terms and conditions hereof. Such written acceptance shall constitute, whether or not expressly stated therein, an acceptance of and agreement to observe and perform all limitations and obligations contained in this article. A permit ordinance shall commence and inure to the benefit of permittee, effective immediately upon the filing of such written acceptance by permittee. An acceptance by permittee or a permitted affiliate satisfies the requirements of this

subsection if it is in writing, signed in the name of such person by an authorized officer, addressed to the city, and provides substantially as follows:

'[Name of permittee or permitted affiliate] [, on behalf of itself and each permitted affiliate named therein,] hereby fully accepts City of Houston Ordinance No. [number of permit ordinance] and expressly agrees to fully observe and fully perform all limitations and obligations contained in chapter 40, article IX, Code of Ordinances, City of Houston, and further certifies to the city all of permittee's information filed with the city in connection with the issuance of such permit ordinance is true, correct and complete.'

If permittee or a permitted affiliate is an entity other than a natural person, such entity shall file with such acceptance a copy of its corporate resolution or other document ("authorization") appropriate to demonstrate that such entity is duly authorized to accept the permit.

(n) *Enforcement.* The city attorney or his/her designee shall have the right to enforce all legal rights and obligations under the permit ordinance without further authorization. Permittee shall provide to the director, finance director and/or city attorney documents and records that the director, finance director and/or city attorney deems reasonably necessary to determine permittee's compliance with the permit, with the exception of those documents made privileged and/or confidential by federal or state law or regulation or any documents that would be privileged under the Texas Rules of Civil Procedure.

(o) *Indemnity; release.* Permittee shall release, protect, defend, and hold harmless the city, its employees, officers, and legal representatives (collectively in this section, the "city") from any and all permittee and/or third party claims, demands, and liability, including defense costs, relating in any way to damages, claims, or fines (collectively, "claims") arising by reason of or in connection with: (1) the city's actual or alleged negligence arising solely from the grant of, administration of, or operations under a permit ordinance, including but not limited to the city's approval of work plans, city inspection of the permittee's pipelines

or the repair or maintenance thereof, the city's receipt or failure to receive insurance policies, or similar acts or omissions of the city in connection with its rights, duties, or obligations under the permit ordinance together with (2) permittee's actual or alleged negligence in the construction, maintenance, or operation of its pipelines in the rights of way under the permit ordinance, provided, however, that the permittee shall not be required to indemnify or pay the defense costs of the city where: (1) the claims arise in whole or in part out of permittee's compliance with the city's directives (other than those ordering compliance with applicable laws, ordinances, rules, or regulations) relating to the time, place, or manner of the activities of permittee alleged or found to be negligent; and additionally (2) there is a finding in a final, nonappealable order or judgment that the city is 51 percent or more at fault.

(p) *Insurance.* Permittee shall provide and maintain in full force and effect during the term of its permit ordinance at least the following insurance:

- (1) Worker's compensation at statutory limits;
- (2) Employer's liability, including bodily injury by accident and by disease, for \$500,000.00 combined single limit per occurrence and a 12-month aggregate policy limit of \$1,000,000.00;
- (3) Commercial general liability coverage, including blanket contractual liability, products and completed operations, personal injury, bodily injury, broad form property damage, operations hazard, pollution, explosion, collapse and underground hazards for \$5,000,000.00 per occurrence and a 12-month aggregate policy limit of \$10,000,000.00; and
- (4) Automobile liability insurance (for automobiles used by the permittee in the course of its performance under the permit, including employer's non-ownership and hired auto coverage) for \$2,000,000.00 combined single limit per occurrence.

The finance director shall adjust the above minimum liability limits every five years during the

term to compensate for the effects of inflation and with the objective to reestablish the value of coverage required as of the effective date.

Each policy or an endorsement thereto, except those for worker's compensation and employer's liability, shall name the city and its officers, employees and agents as additional insured parties, but limited to risks indemnified pursuant to subsection (o) of this section. If any such policy is written as "claims made" coverage and the city is required to be carried as an additional insured, then permittee shall purchase policy period extensions so as to provide coverage to the city for a period of at least two years after the last date that the permit ordinance is in effect. No deductible shall exceed ten percent of the minimum limits of liability or one percent of the consolidated net worth of permittee and its permitted affiliates, whichever is greater.

Permittee shall assume and bear any claims or losses to the extent of deductible amounts and waives any claim it may ever have for the same against the city and its officers, agents or employees in respect of any covered event.

All such policies and certificates shall contain an agreement that the insurer shall notify the finance director in writing not less than 30 days before any material change, reduction in coverage or cancellation of any policy. Permittee shall give written notice to the finance director within five days of the date upon which total claims by any party against permittee reduce the aggregate amount of coverage below the amounts required by the permit.

Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the city, its officers, agents or employees.

Each policy must contain an endorsement that such policy is primary insurance to any other insurance available to the city as an additional insured with respect to claims arising thereunder.

Permittee shall be entitled to purchase and maintain the insurance required under this subsection under so-called "blanket policies, provided the

coverage thereunder is at least at the levels contained herein and is otherwise adequate in keeping with prudent underwriting standards.

At the time of application, and at the finance director's request, permittee shall provide certificates of insurance reflecting that the terms of this subsection have been met. Notwithstanding the proof of insurance requirements set forth in this subsection, permittee, throughout the term of its permit, continuously and without interruption, shall maintain in force the required insurance coverages set forth in this subsection.

In lieu of maintaining policies of insurance described in this subsection, permittee may elect to self-insure against the risks described in this subsection, provided that permittee submits to the director documents showing either (i) self-insurance reserves or other assets sufficient to pay judgments equal to the minimum limits of liability set forth in this subsection, or (ii) a net worth that exceeds ten times the aggregate minimum limits of liability set forth in this subsection. If, during the term of a permit ordinance, any such self-insurance program ceases or the self-insured's assets, reserves or net worth are no longer adequate to provide the above coverages, permittee shall immediately notify the city of such lapse of coverage and obtain or cause to be obtained commercial insurance in accordance with the requirements of this subsection within 30 days. If permittee self-insures, permittee has a duty to defend the city in the same manner as a permittee with insurance in any suit seeking damages against the city in connection with permittee's pipeline, and permittee will pay all costs and expenses of such defense or reimburse the city for all costs and expenses incurred by the city for such defense.

(q) *Events of termination.* A permit ordinance issued under this article shall, at the option of the city council, terminate (as to the affected pipeline or portion thereof only in the event of an occurrence under subsections (1), (5) or (6) below) upon the occurrence of any one or more of the events described below (collectively referred to herein as "events of termination"). Each event of termination is a separate and independent basis for termination of the permit (or application thereof

to the affected pipeline or portion thereof, as applicable). The events of termination are as follows:

- (1) The city council, in its legislative discretion, determines that the existence or operation of a pipeline, or any part thereof, constitutes a hazard, nuisance or other threat to the public health, safety or welfare or that the existence or continued operation of the pipeline, or any part thereof, interferes with the current or prospective use of a street. Termination under this subsection shall be by ordinance and become effective after permittee has been given 180 days' notice of such termination, unless circumstances comprising a bona fide emergency and an imperative public necessity warrant more immediate termination.
- (2) Expiration of the term of the permit ordinance.
- (3) Permittee fails to timely pay any of the fees herein provided for or is delinquent in the payment of any charges due under the permit ordinance.
- (4) Permittee fails to maintain at any time the insurance as required in this article.
- (5) Permittee fails to commence or thereafter to diligently prosecute to completion any required maintenance, repair or other work required by this article to be done by permittee within 30 days after being notified of such required action by the director. In the event of an emergency, notice shall be deemed given and received after telephone contact with an authorized officer or director of permittee, and permittee shall commence the requested repairs within 24 hours.
- (6) Permittee abandons the pipeline.
- (7) Permittee fails to file a written acceptance of the permit ordinance within the time and in the manner prescribed in this article.
- (8) Permittee fails to comply with any of the terms, conditions or provisions of the permit ordinance or this article.

- (9) Permittee commences dissolution or some other similar proceeding that would impair, modify, alter, extinguish or significantly change permittee's ability to perform permittee's obligations under the permit ordinance.

Upon the occurrence of an event of termination described in subsections (1) or (2), such an event of termination may not be cured by permittee and the permit ordinance shall terminate (only as to the affected pipeline in the event of termination pursuant to (1), (5), or (6) above) in the manner and in accordance with the applicable provisions of said subsections and the permit ordinance. Upon the occurrence of one or more of the events of termination other than in subsections (1) or (2), the director or finance director shall so notify permittee in the manner provided in the permit ordinance. After such notice, permittee shall have 30 days in which to cure the event of termination. Should permittee fail or refuse to cure the event of termination within the 30-day time period prescribed, city council may terminate the permit ordinance (only as to the affected pipeline or portion thereof in the event of termination pursuant to (5) or (6)); provided that if permittee commences efforts to cure such event of termination within 30 days after receipt of such written notice and thereafter prosecutes such efforts with reasonable diligence in the sole determination of city council until such event of termination is cured, then such event of termination shall cease to exist and no action to terminate the permit ordinance or an application thereof will be taken. Failure of the city to enforce its rights and remedies under this section with respect to one event of termination shall not operate as a waiver of the city's right to thereafter enforce its rights and remedies with respect to any such continuing event of termination or another event of termination. Termination of the permit ordinance or an application thereof shall not waive, release or satisfy any duty, covenant or obligation of permittee under this article or the permit ordinance which permittee has not fully performed as of the time of termination.

(r) *Transfer of authority.*

- (1) *Notice.* A person may acquire and own pipeline prior to being permitted pursu-

ant to this article if (i) the permittee notifies the city within ten days of the transfer of ownership, and (ii) permittee retains all responsibilities associated with the permit until the city approves the transfer of the permit.

- (2) *Prohibition.* Neither the permit ordinance nor the permit granted thereby may be assigned, in whole or in part, without the prior consent of the city council expressed by resolution or ordinance, and then only under such conditions as may therein be prescribed. No assignment in law or otherwise shall be effective until the assignee has filed with the director an instrument, duly executed, reciting the fact of such assignment, accepting the terms of this article, and agreeing to comply with all of the provisions of the permit ordinance. A mortgage or other pledge of assets in a bona fide lending transaction shall not be considered an assignment for the purposes of this section.
- (3) *Process.* Upon receipt of a request for consent to an assignment, the director shall diligently investigate the request in a timely manner and recommend placement of the request on the city council agenda at the earliest practicable time. The city council shall proceed to act on the request within a reasonable period of time.
- (4) *Scope of review.* In reviewing a request for consent to an assignment, the city may inquire into the technical and financial qualifications of the prospective assignee, and permittee shall assist the city in so inquiring.
- (5) *Assignments not requiring approval.* Notwithstanding anything to the contrary contained in this section, the approval of the city shall not be required for any assignment (1) to any permitted affiliate; (2) to any entity with which permittee or an affiliate of permittee shares joint ownership of the pipeline, as long as permittee is retained as the manager of day-to-day pipeline operations; or (3) to any entity that is a holder of a then current

permit ordinance enacted by the city on or after the effective date. Permittee shall give written notice of such assignment to the director.

- (6) *Release.* Upon receiving the director's consent to an assignment or, in the event of an assignment qualifying under subsection (r)(5), upon giving notice under subsection (r)(5), the assigning permittee shall be relieved of all conditions, obligations, and liabilities arising or which might arise under the assigned permit, from and after the date of assignment.

(s) *Cathodic protection.* Any cathodic protection system used with permittee's pipelines shall not cause any existing public facilities in the vicinity of the pipeline and known to permittee to be sacrificed or experience materially accelerated corrosion as a result of the operation of such cathodic protection system.

(Ord. No. 01-1078, § 2, 12-5-01; Ord. No. 02-399, § 84, 5-15-02)

Sec. 40-235. Effect of other laws.

The provisions of this article shall be subject to any federal and state legislation, rules, or regulations, presently or hereafter enacted or adopted, to the extent that said laws and regulations preempt or supersede the authority of the city with respect to this article or any provision hereof. (Ord. No. 01-1078, § 2, 12-5-01)

Secs. 40-236—40-249. Reserved.

ARTICLE X. PAVING ASSESSMENTS*

Sec. 40-250. Declaration of policy.

It is hereby declared to be the policy of the City of Houston that a dwelling claimed as a residence homestead which is located in an area where deed restrictions do not exist, or where such restrictions are of doubtful enforceability, shall, for paving assessment purposes, be treated similarly to a

***Cross references**—Taxation generally, Ch. 44; paving assessment lien releases, § 44-20.

dwelling located in an area having enforceable deed restrictions, to the extent that is practicable. (Ord. No. 87-285, § 1, 2-25-87)

Sec. 40-251. Definitions.

The following words and phrases shall be defined as follows:

- (1) *Eligible*, when used to modify "unrestricted homestead property," as herein defined, shall mean that the ordinance closing the hearing and assessing the benefits has not been adopted at the time of the effective date of this article.
- (2) *Equivalent assessment* shall mean that part of the paving assessment on an eligible unrestricted homestead property which would be applicable to a similar restricted dwelling.
- (3) *Excess assessment* shall mean the amount by which an assessment on an eligible unrestricted residence homestead property exceeds the assessment on a similar restricted dwelling.
- (4) *Exemption* shall mean a residence homestead exemption recognized by the H. C. A. D., as herein defined.
- (5) *H. C. A. D.* shall mean the Harris County Appraisal District, or where appropriate, any other governmental entity or agency which has, or previously had, authority to recognize residence homestead exemptions.
- (6) *Owner* shall mean one or more persons who have legal title to an unrestricted residence homestead property.
- (7) *Restricted dwelling* shall mean a dwelling located in an area which has enforceable deed restrictions.
- (8) *Unrestricted residence homestead property* shall mean a dwelling claimed as a homestead and located in an area having no deed restrictions, or where such deed restrictions are of doubtful enforceability. (Ord. No. 87-285, § 1, 2-25-87)

Sec. 40-252. Reduction of excess assessment—Amount.

The personal obligation of the owner of an eligible unrestricted residence homestead property for payment of the excess assessment levied against such property may be reduced and cancelled by one-tenth of the amount of such excess assessment for each year of occupancy in which the owner has received an exemption from the H. C. A. D. and furnishes proof thereof to the finance and administration department of the city. (Ord. No. 87-285, § 1, 2-25-87)

Sec. 40-253. Same—Procedure.

An owner desiring to reduce and cancel the amount of the excess assessment on eligible unrestricted residence homestead property shall:

- (1) Apply to the finance and administration department of the city for the reduction and cancellation of the excess assessment;
- (2) Furnish with such application proof satisfactory to the finance and administration department that the eligible unrestricted residence homestead property was occupied by the owner at the time the initiation ordinance for the paving improvement was passed;
- (3) Furnish proof the owner had received an exemption from the H. C. A. D. for the year in which the initiation ordinance was adopted; and
- (4) Annually furnish proof to the finance and administration department of the city that the H. C. A. D. has continued to grant an exemption for such eligible residence homestead property so long as the owner remains qualified to claim a reduction or cancellation of the excess assessment as herein provided. (Ord. No. 87-285, § 1, 2-25-87)

Sec. 40-254. Obligation for payment of equivalent assessment.

The personal obligation of the owner for payment of the equivalent assessment, if any, shall continue in force without regard to the reduction

or cancellation of the excess assessment, and the owner shall be obligated to pay interest on the unpaid balance thereof as provided in the ordinance closing the hearing and assessing the benefits. If the exemption terminates before cancellation of the excess assessment, the balance thereof shall become a personal obligation of the owner or the owner's estate and interest thereon shall accrue at the rate provided in the ordinance closing the hearing and assessing the benefits from the date of the loss of the exemption. (Ord. No. 87-285, § 1, 2-25-87)

Sec. 40-255. Satisfaction of amount due.

Upon final and complete payment of the equivalent assessment, if any, and the cancellation or payment of the balance of the excess assessment, the city will furnish to the owner or the owner's successor in interest, a recordable instrument acknowledging the full and final satisfaction of the amount owed by the owner or the owner's estate.

(Ord. No. 87-285, § 1, 2-25-87)

Secs. 40-256—40-260. Reserved.

ARTICLE XI. SIDEWALK SALES AND PERFORMANCES

DIVISION 1. GENERALLY

Sec. 40-261. Scope of article; definitions.

(a) This article shall control and govern certain sales of merchandise and sidewalk performances within a portion of the downtown area that is associated with the theater/entertainment district.

(b) The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

Director shall mean the director of the city's department of public works and engineering and shall include the director's designees.

Fee owner shall mean the holder of the fee title or other person having the present right of possession and control of the real property abutting the sidewalks. In those instances where the city is the fee owner, then it shall mean the department director of the city department responsible for maintenance and control of the property. No provision herein shall be construed to require any city department director to grant permission for the use of any city property or to waive the payment of any applicable concession or use fee.

Food shall have the meaning ascribed in section 20-18 of this Code.

Food vendor shall mean a person who sells food from a mobile food unit.

Merchandise vendor shall mean a person engaged in the sale of artwork, souvenirs, or fresh flowers, or any combination thereof.

Mobile food unit or *unit* shall mean a food service establishment, mounted on wheels, designed to be readily movable, and propelled solely by human power.

Performers shall mean and include bands, musicians, singers, mimes, and other artists who perform for gratuities on the sidewalk without the use of any electronically amplified instruments and without electronic amplification of sound produced.

Permit shall mean a current, valid permit issued by the director pursuant to the terms of this article to a function as either a vendor or a performer.

Permittee shall mean the holder of a permit as either a vendor or a performer issued by the director under this article and includes the permit holder's agents, employees, and subcontractors.

Sidewalk shall mean that portion of the street right-of-way that is improved for pedestrian use.

Theater/entertainment district shall mean the area including to the mid-point of and bounded by Preston Street on the north, Dallas Street on the south, Milam Street on the east, and Interstate Highway 45 on the west.

Vendor shall mean a person engaged in the sale of food or nonfood merchandise on the sidewalk.

(Ord. No. 91-1168, § 4, 8-14-91; Ord. No. 04-1015, § 30, 9-27-04; Ord. No. 05-91, § 1, 1-25-05)

DIVISION 2. PERMIT

Sec. 40-262. Required.

It shall be unlawful for any person who is not a permittee to sell merchandise or food on the sidewalks in the theater/entertainment district or conduct sidewalk performances in the theater/entertainment district.

(Ord. No. 91-1168, § 1, 8-14-91)

Sec. 40-263. Application and accompanying documents generally.

Any person desiring to obtain a permit to sell merchandise or food on the sidewalks in the theater/entertainment district or to conduct sidewalk performances in the theater/entertainment district shall file an application with the director on a form prescribed by the director for that purpose. The application shall set forth the following information and be accompanied by the following documents:

- (1) The name, mailing address, street address (if different), and telephone number of the applicant, together with a statement as to whether the applicant is an individual, a partnership, or a corporation, and if a partnership, the names of all general partners or if a corporation a copy of the articles of incorporation;
- (2) A map showing the proposed location of the specific site(s) desired. The applicant may either designate one site for twenty-four hour use or designate two sites, with one site designated as the daytime site with hours of operation between 7:00 a.m. until 5:00 p.m. and the other site designated as the night time site with hours of operation between 5:01 p.m. until 6:59 a.m.;
- (3) The written permission of the abutting fee owner for the use of the site(s);

- (4) A statement whether the applicant desires a permit as a food vendor, merchandise vendor, or as a performer.
- (5) If the applicant seeks a permit as a performer, then a description of the performances to be provided.
- (6) If the applicant seeks a permit as a food vendor or a merchandise vendor, then proof that the sales of merchandise or food will be covered by comprehensive general liability insurance with limits of not less than \$100,000.00 for death of or injury to one person and \$300,000.00 for death of or injury to more than one person and \$25,000.00 for property damage, per occurrence, which policy shall name the city as an additional insured, and shall provide that ten days' prior notice be given to the director in the event of cancellation;
- (7) A description of the nature, size, and manner of construction of any carts or racks, other display equipment, musical instruments, or theatrical props to be utilized by the applicant which shall be subject to review to insure that the same will not pose a hazard to vehicular or pedestrian traffic;
- (8) A food vendor applicant shall provide proof that the mobile food unit has a current and valid mobile food service unit medalion issued under section 20-37 of this Code.
- (9) A food vendor applicant shall state whether his operations will be limited to "restricted operations" as defined in section 20-22 of the City Code. If not, then the applicant shall also provide proof that he holds a current and valid food dealer's permit issued under chapter 20 of this Code.
- (10) A food vendor applicant shall state whether the mobile food unit will be fueled by liquefied petroleum gas. If so, the applicant shall provide proof that he holds a current and valid permit for the use of

liquefied petroleum gas on the mobile unit issued pursuant to article 82 of the Fire Code.

- (11) A food vendor applicant shall provide a photograph or graphic representation accurately depicting the unit and a general written description of the unit and shall demonstrate that the unit meets all of the same special requirements that are applicable to mobile food units used by licensed park vendors as specified in section 20-22 of this Code.

(Ord. No. 91-1168, § 4, 8-14-91; Ord. No. 95-279, § 12, 3-15-95)

Sec. 40-264. Fees.

Each application shall be accompanied by a nonrefundable fee, as follows:

- (1) The fee for a food vendor permit shall be \$100.00 for a permit valid for one year.
- (2) The fee for a food vendor permit shall be \$30.00 for a permit valid for one month.
- (3) The fee for a merchandise vendor or performer permit shall be \$50.00 for a permit valid for one year.
- (4) The fee for a merchandise vendor or performer permit shall be \$10.00 for a permit valid for one month.

(Ord. No. 91-1168, § 4, 8-14-91)

Sec. 40-265. Permit—Issuance or denial.

(a) Within ten days of receipt of a permit application, the director shall grant or deny the requested permit and give written notice to the applicant of the decision.

(b) The director shall issue a permit to the applicant on a first applied, first issued basis unless one or more of the following conditions exist:

- (1) The applicant failed to supply all of the information requested on the application;
- (2) The applicant gave materially false, fraudulent, or untruthful information on the application;

- (3) The applicant has not fully complied with all state, federal, and local laws or regulations affecting the conduct of its businesses;
- (4) The public works and engineering department determines that the application should be denied on the basis of the review conducted under section 40-268 of this Code; or
- (5) The application or the applicant does not meet any other requirement of this Code.

(c) In the event that the director determines that an application should be denied, the applicant shall be given notice in writing of the reasons for the denial. An applicant may appeal the decision of the director regarding such denial by filing a written request for a hearing with the director within ten days after he is given notice of such denial. The director's decision on the application shall be final unless an appeal is timely filed. An appeal shall not stay the director's decision on the issuance of a permit. The applicant's written request for a hearing shall set forth the grounds on which the denial is challenged. The hearing shall be conducted by the city's director of finance and administration or his designee who shall act as the hearing official under this article. The hearing official shall not have participated in any investigation or decision relating to the denial of the permit. At the hearing, the hearing official shall receive oral and written evidence regarding the application. Hearings shall be conducted under rules issued by the director of finance and administration which shall be consistent with the nature of the proceedings and shall ensure that each party may present evidence, cross-examine witnesses, and be represented by legal counsel.

(d) The hearing official shall conduct the hearing within ten days after receipt of the applicant's written request for a hearing, unless the applicant requests an extension in writing. The hearing official shall render written decision and issue notice thereof, to the applicant within five days after the conclusion of the hearing. The written decision of the hearing official shall be final.

(e) Failure of the director to give timely notice of his action on an application or failure of the hearing official to timely conduct or give notice of

his decision on an appeal from the director's decision, shall entitle the applicant to the issuance of a temporary permit upon written demand therefor filed by the applicant with the director. Such a temporary permit shall only be valid until the third day after the director gives notice of his action on the application or the hearing official gives notice of his decision on the appeal, as applicable.

(Ord. No. 91-1168, § 4, 8-14-91; Ord. No. 93-514, § 84, 5-5-93)

Sec. 40-266. Same—Revocation.

(a) The director shall have the authority to revoke a permit for any one or more of the following reasons:

- (1) The permittee gave materially false, fraudulent, or untruthful information on the application;
- (2) The permittee failed to fully comply with all state, federal, and local laws or regulations affecting the conduct of its business;
- (3) The permit was issued in error;
- (4) The permittee has failed to follow the direction of the director or any peace officer of the city to temporarily vacate a site until any undue vehicular and pedestrian traffic congestion or any other unsafe condition was abated; or
- (5) The permittee has violated any other provision of this article;
- (6) The activities of the permittee are not being conducted in the manner described in the application;
- (7) For food vendors and merchandise vendors, that the insurance required in section 40-263 has expired or been cancelled without renewal or replacement; or
- (8) The written permission of the abutting fee owner for the use of the site(s) has been revoked.

(b) Prior to revocation of a permit, the director shall investigate the grounds alleged to determine whether probable cause for revocation may exist and, if so, shall notify the permittee in

writing of reasons for the proposed revocation and grant such permittee the opportunity to appear before a hearing official to be designated by the director of finance and administration at a time and place specified within such notice. The hearing official designated shall not have participated in any investigation of the alleged grounds for the revocation. Such hearing shall be held not less than ten days after the notice is given. Hearings shall be conducted under rules issued by the director of finance and administration. Such rules shall be consistent with the nature of the proceedings and shall ensure that each party may present evidence, cross-examine witnesses, and be represented by legal counsel. If, after the hearing, the hearing official finds that the permit should be revoked, he shall issue a written order revoking such permit which shall be effective on the third day after notice thereof is given to the permittee. The written decision of the hearing official shall be final.

(Ord. No. 91-1168, § 4, 8-14-91)

Sec. 40-267. Other permit provisions.

(a) A permit shall be valid only for the use of the site(s) stated thereon and must be maintained and prominently displayed at the site(s) at all times while in use.

(b) All activities by performers, food, and merchandise vendors will be conducted upon the designated site(s); provided however, that if the director of parks and recreation grants approval for a special event in a city park that is located within the theater/entertainment district and a food or merchandise vendor has selected a site(s) in or within 100 feet of the boundaries of that park, then the vendor applicant agrees that upon notice by an employee of the parks and recreation department of that park event, for the duration of that park event, he shall suspend his operations at that site(s) during the time that the park event is occurring and select an alternative site(s) subject to any approval herein required and located outside of 100 feet of the boundaries of that park.

(c) The permittee shall not install, erect, or maintain any signs on the sidewalk except in the case of food vendors, those permitted on the unit itself.

(d) Sites for mobile food units and merchandise vendors shall be at least 20 feet apart.

(e) Sites for performers shall be at least 130 feet apart.

(f) The size and location of sites must be such that they will not pose a hazard to vehicular or pedestrian traffic.

(g) The permittee shall not install any permanent improvement on the sidewalk.

(h) In the event that activities at any site should cause undue vehicular and pedestrian traffic congestion or any other unsafe condition, then the director or any peace officer of the city may direct the permittee to temporarily vacate the site until the situation has abated, and the permittee shall comply.

(i) All equipment and materials shall be removed from the site at any time that the permittee is not physically present upon the site. If equipment and materials are left unattended, they may be removed. The permittee shall then be liable for all reasonable removal and storage charges.

(j) Sales of food or merchandise shall be made only to pedestrians. No food or merchandise shall be offered or sold to any occupant of any vehicle.

(k) Permittees shall remain within their sites and shall not hawk their merchandise or services in any manner, but may respond to inquiries about their merchandise or services.

(l) The permittee shall maintain records of daily gross sales, purchases, and expenses of or from the unit and those records shall be available for inspection by the director upon request. These records need not be available on the unit itself.

(m) The permittee shall be responsible for supervising the conduct of its patrons and employees.

(n) The permittee and his employees shall wear clean outer garments and shall refrain from smoking and eating during working hours.

(o) A permit shall only be valid for the purpose described in the application; a permit issued to a food vendor or merchandise vendor shall not

authorize the vendor to act as a sidewalk performer and a permit issued to a sidewalk performer shall not authorize the sidewalk performer to act as a food vendor or merchandise vendor.

(p) A permit may be canceled upon written request of the permittee and surrender of the permit itself to the director. The surrender of a permit shall be effective upon its filing in the office of the director.

(q) A permit shall be personal to the permittee and may not be transferred or assigned.

(r) The permittee shall update and supplement the information provided as a part of his application to ensure that it remains true and correct at all times.

(Ord. No. 91-1168, § 4, 8-14-91)

Sec. 40-268. Referral to other departments.

Each application shall be reviewed by the public works and engineering department under the criteria of subsections (c), (d), (e), and (f) of section 40-267 of this Code and item (7) of section 40-263 of this Code, referred to the department of parks and recreation for review under the criterion of subsection (b) of section 40-267 of this Code, and referred to the department of health and human services for review under the criteria of items (8), (9), (10) and (11) of section 40-263 of this Code and subsection (d) of section 40-269 of this Code. (Ord. No. 91-1168, § 4, 8-14-91; Ord. No. 93-514, § 85, 5-5-93; Ord. No. 04-1015, § 31, 9-27-04)

Sec. 40-269. Food vendors—Additional conditions for permits.

A food vendor's permit shall be further subject to the following conditions and may be suspended or revoked for failure to comply with any one of them:

(a) The permittee shall maintain the unit in good repair and keep it free from defects that may present a hazard to life or property.

(b) The permittee shall make the unit available for inspection by the director or the health officer or their representatives at

any time while the unit is in operation. No notice prior to such an inspection shall be required.

- (c) The permittee shall thoroughly clean the unit and drain and flush the liquid waste tanks each day the unit is operated.
- (d) A food vendor applicant shall provide a description of all foods to be sold and the proposed hours of operation.
- (e) The permittee must comply with all other applicable state and city rules and regula-

tions specifically including all food or health-related ordinances of the city and all state and federal food labelling laws. The unit itself and the permittee must meet all applicable requirements for the operation of mobile food units and food establishments as set out in chapter 20 of the City Code at all times.

- (f) In addition to the marking requirements of chapter 20 of the City Code, each unit shall be clearly marked with the name and phone number of the permittee and the phone number of the city's department of health and human services.
- (g) The permittee shall serve, store, and display his food on or in the unit itself and shall not use, set up, or attach any crate, carton, rack, table, or other device to increase the selling or display capacity of his unit.
- (h) The permittee shall not leave the unit unattended. If the unit is left unattended, it may be towed. The permittee shall then be liable for all reasonable towing and storage charges.
- (i) The permittee shall not use the unit or allow anyone else to use the unit to sell, distribute, or give away any foods other than those stated in the application for the permit. The permittee is not authorized to and shall not sell any non-food items.
- (j) The permittee shall keep the area within twenty-five (25) feet of the unit clean and free of litter at all times. The litter receptacle on the unit shall be emptied regularly in other than a public receptacle. The litter receptacle shall be kept covered with a tight fitting lid when not in continuous use.
- (k) The permittee shall not make any structural alteration of the unit without giving thirty (30) days' advance written notice to the city.

(Ord. No. 91-1168, § 4, 8-14-91)

Sec. 40-270. Same—Unsafe or unhealthful conditions.

Notwithstanding the other provisions of this article, whenever the director or the health officer

finds an unsanitary or other unhealthful or unsafe condition in the operation of a unit, he may issue a written notice to the permittee citing such condition, specifying the corrective action to be taken, and specifying the time period within which such action shall be taken; and, if deemed necessary, such order shall state that the permit is immediately suspended, and all food service operations are to be immediately discontinued. Any person to whom such an order is issued shall comply immediately therewith, but upon written petition to the director, shall be afforded a hearing within three (3) business days after the issuance of that order.

(Ord. No. 91-1168, § 4, 8-14-91)

Sec. 40-271. Automatic suspension.

Suspension, revocation, or expiration of a permittee's food dealer's permit, mobile food service unit medallion, or required insurance coverage shall result in the automatic suspension of the permit granted hereunder without further action on the part of the city. Such suspension shall remain in effect until the permittee's food dealer's permit, mobile food service unit medallion, or insurance, as applicable are restored.

(Ord. No. 91-1168, § 4, 8-14-91)

Sec. 40-272. Issuance of regulations.

Consistent with the provisions of this Code, the director may issue regulations pertaining to the administration of this article, including but not limited to the submission of applications. A copy of such regulations shall be maintained on file for inspection at the office of the director. Copies of such regulations may be obtained upon payment of the copying fees prescribed by law.

(Ord. No. 91-1168, § 4, 8-14-91)

Sec. 40-273. Notices.

(a) Any notice required or permitted to be given by the director or any other city office, division, department, or other agency under this article to any applicant or permittee may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the permit or permit re-

newal which has been received by the director, or any notice of address change which has been received by the director. Notices mailed as above shall be deemed given upon their deposit in the United States mail.

(b) Any notice required or permitted to be given to the director by any person under this article shall not be deemed given until and unless it is received in the office of the director at the time and in the manner provided for filing applications in section 40-263 of this Code.

(c) It shall be the duty of each applicant and permittee to furnish notice to the director in writing of any change of residence or mailing address.

(Ord. No. 91-1168, § 4, 8-14-91)

Secs. 40-274—40-280. Reserved.

ARTICLE XII. MONITORING WELLS AND ENVIRONMENTAL TEST BORING FACILITIES

Sec. 40-281. Definitions.

As used in this article, the following terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

Applicant means an applicant for a permit under this article.

Bond means a cash deposit with the city, or a bond executed by the permittee, as principal, and a corporate surety authorized to transact business, as such, in Texas on condition that the permittee will promptly and fully comply with all provisions of this article and will reimburse the city or any utility company for all costs associated with the removal of the facility and the restoration of the facility site if removed by the city or a utility company pursuant to this article. A surety bond must be in a form approved by the director and be accompanied by a power of attorney or other convincing evidence of the issuing agent's authority to act for the surety company. A surety bond issued by a company that is not listed on the then current listing of accepted sureties on fed-

eral bonds as published by the United States Treasury Department must also be accompanied by a certificate of qualification as a surety from the Texas Board of Insurance Commissioners.

Director means the director of the public works and engineering department or any person designated by the director to perform his responsibilities under this article.

Facility means any mechanical device or monitoring well and its associated apparatus, placed within a public street, and designed and constructed to measure or monitor the quality or movement of foreign substances, elements, chemicals, fluids, or pollutants below the surface of the ground; or any mechanical device, method, or apparatus, placed in a public street and designed and constructed to obtain a sample soil core boring from a depth of greater than one (1) foot below the surface of the ground, for the purpose of removing soil for environmental quality testing.

Parks official means the director of the parks and recreation department or any person designated by that director to perform his responsibilities under this article.

Permit means a current and valid permit issued pursuant to this article.

Permittee means a person who holds a permit issued pursuant to this article.

Public street means the entire width between the boundary lines of every way which is held by the city in fee or by easement or dedication when any part thereof has been accepted by the city, or has been opened to the use of the public for purposes of vehicular travel; the term "public street" shall include any designated state or federal highway or road or any designated county road which is under the administrative control of the city for maintenance, repair, or vehicular traffic control purposes.

Roadway means that portion of a public street which is improved, designed, or ordinarily used for vehicular travel, exclusive of the curb, berm, or shoulder. In the event that a public street includes two (2) or more separate roadways, "roadway" means each such roadway separately.